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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 86-1976

WILLIAM J. BRIGGS,

Petitioner,

v.

INDIANA SUPREME COURT
DISCIPLINARY COMMISSION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

BRIEF FOR RESPONDENT INDIANA SUPREME COURT DISCIPLINARY COMMISSION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S BRIEF IN OPPOSITION

I.

OPINION BELOW

The decision and opinion giving rise to Petitioner's Application for Writ of Certiorari were made and entered by the Supreme Court of Indiana on February 13, 1987. *In the Matter of William J. Briggs*, 502 N.E.2d 879 (Ind. 1987). The decision and opinion are set forth in Petitioner's Appendix at App. B1-46. The effect of the subject decision and opinion was to suspend Petitioner from the practice of law in the State of Indiana for a period of two years.

II.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

III.

QUESTIONS PRESENTED

The Respondent will respond below in its argument to the questions presented by Petitioner which the Respondent feels warrant discussion. The questions the Disciplinary Commission do not address were found to be without merit on their faces.

IV.

STATEMENT OF THE CASE

Initial grievances were filed with the Indiana Supreme Court Disciplinary Commission ("Disciplinary Commission") in July 1977. After investigation, the Disciplinary Commission voted to file a disciplinary action against Petitioner on July 14, 1978. On October 24, 1978 a Verified Complaint For Disciplinary Action was actually filed. A Hearing Officer was appointed by the Supreme Court of Indiana on October 30, 1978, but the Officer failed to schedule the matter for hearing due to his involvement in another unrelated trial. Disciplinary Commission Attorney Hughes wrote two letters to the Hearing Officer in August and September of 1980, requesting pre-trial conference dates. After receiving no response, attorney Hughes suggested that the Disciplinary Commission attempt to obtain a new Hearing Officer.

Subsequently, the Hearing Officer became seriously ill and eventually died in the fall of 1981. At the time of his death he had not been relieved of his duties in this cause. Before a new Hearing Officer was appointed, additional grievances against Petitioner and his wife, who is also an attorney, were filed with

the Disciplinary Commission on April 9, 1981.

Prior to a complete investigation of the new grievances, a new Hearing Officer was appointed to the original cause on November 30, 1981. Petitioner objected thereto and a third Hearing Officer was appointed on February 24, 1982. After the second set of grievances were investigated, the Disciplinary Commission found reasonable cause and the Disciplinary Commission Executive Secretary was directed to file an Amended Verified Complaint on July 19, 1983. Because the trial of the initial grievance was not imminent, the Disciplinary Commission followed its usual procedure of combining the grievances into a single cause. At a December 16, 1983 pre-trial conference the Hearing Officer also ordered the trials of Petitioner and his wife joined and the trial was scheduled for April 24, 1984.

Petitioner's wife moved for and was granted a continuance on March 19, 1984 and the trial was rescheduled for July 12, 1984. The trial began on this date and ended on August 30, 1984. The parties then waived the 30 day reporting requirement for the Hearing Officer. The Hearing Officer filed his report to the Indiana Supreme Court on January 18, 1985, pursuant to Admission and Discipline Rule 23, Section 14(f). In said report, the Hearing Officer found that Petitioner had committed acts of misconduct and recommended the suspension of the Respondent from the practice of law in Indiana for a period of six months.

A review by the Supreme Court of Indiana of the findings and conclusions contained in the Hearing Officer's Report is provided for in Admission and Discipline Rule 23, Section 15(a). Petitioner petitioned for review of certain factual findings of the Hearing Officer on February 18, 1985 and the Disciplinary Commission likewise requested a review on August 19, 1985. The Court found on its review that the Petitioner had violated the Code of Professional Responsibility to such extent as to warrant's suspension from the practice of law in Indiana for a period of two (2) years.

Petitioner then filed a "Petition for Temporary Stay" which was denied on February 12, 1987. Subsequently a joint "Petition For Modification of Judgment" was denied on February 25, 1987.

V.

REASONS FOR DENYING THE WRIT

The Petitioner has attempted to present numerous questions which he feels warrant this Court's issuance of its extraordinary Writ of Certiorari. The Respondent responds only to those it feels warrant discussion.

The first issue to be considered is whether a defendant in an attorney disciplinary proceeding has a constitutional right to a "speedy" trial or to a trial "without delay". The Petitioner's brief cites numerous cases to support his claim that he is entitled to a speedy trial and that he was prejudiced by the delays that occurred. However, virtually ever one of his cited cases involved a criminal proceeding. The Sixth Amendment of the Constitution of the United States expressly is applicable only to criminal prosecutions and both this Court and the Supreme Court of Indiana have held that an attorney disciplinary proceeding is not a criminal prosecution. *In Re Ruffalo*, 390 U.S. 544, 551 (1968). *In Re Kessler*, 272 Ind. 161, 397 N.E.2d 574, 576 (1979).

If this Court finds that an attorney is guaranteed the right to a speedy trial under the Sixth and Fourteenth Amendments of the *United States Constitution*, then a balancing test such as that used in *Barker v. Wingo*, 407 U.S. 514 (1972), must still be applied to determine if the delay was prejudicial to Petitioner. *The Barker* balancing test weighs (1) length of delay; (2) the reason for delay; (3) the defendant's timely assertion of his right and; (4) prejudice occurring to the defendant. The first guidepost is given and the three remaining guideposts are addressed in following sections of this brief.

As to guidepost (2) set forth in *Barker*, Petitioner argues that the Disciplinary Commission unduly delayed prosecution of this matter and that as a result his right to due process of law under the Fifth and Fourteenth Amendments of the *Constitution of the United States* was violated. Petitioner claims that the seven (7) year delay in reaching trial can be blamed on the Disciplinary Commission. This argument is unsupportable. Petitioner himself caused the majority of delays that occurred and condoned the remainder until July 21, 1983 when the Hearing Officer ordered the cause set for a pre-trial conference. Examples of delays caused or condoned by Petitioner are as follows: (1) Petitioner's attorney and attorney Hughes of the Disciplinary Commission agreed to await the results of the pending civil litigation which gave rise to the first disciplinary complaint. All civil litigation was completed on December 9, 1980 which was nearly three and one half years after the initial grievance was filed. (2) Petitioner requested and received a four month extension to file a response to the second set of grievances filed against him on April 9, 1981. (3) After the death of the original Hearing Officer, the Petitioner objected to the appointment of a second Hearing Officer and a third Hearing Officer was not appointed by the Indiana Supreme Court until four months later.

As to guidepost (3) of *Barker*, it must be noted that at no time did Petitioner make a request for an expedited hearing. In addition from September 10, 1982, the date of approval of further proceedings by the Commission to July 19, 1983, the date the Amended Verified Complaint was filed, delays attributable to the Commission were all directly related to the individual workload and circumstances of Commission trial attorney Hughes.

As to guidepost (4) of *Barker*, the Petitioner argues that he was prejudiced and harmed by the delay in this proceeding which he incorrectly attributes to the Commission. The Hearing Officer's findings on this claim of prejudice are as follows:

> From all appearances, preservation of evidence in this matter was far easier than it might have been in a different

> type of case. The relationships of the parties while various documents were created, the contents of the documents and the pleadings and evidence submitted in the Court struggle make this case one where the record of events was, by its very nature, well preserved. Respondent was put on notice early that this action would result so he had ample opportunity to recall and preserve as much as necessary. Petitioner's App. at C-115.

Therefore, it is respectfully submitted that Petitioner has failed to present a question that requires this Court's review based upon the facts of this case.

The Petitioner's claim that he was denied a fair hearing due to the amount of time that elapsed from the filing of the 1977 grievance to the commencement of the final hearing is without basis in law or in fact. The Petitioner and/or his then counsel willingly condoned and participated in whatever delay occurred at least through July, 1982. The Petitioner's claim that the Disciplinary Commission was the sole cause of all delay is patently false.

The Petitioner also asserts that his First Amendment rights were violated by the application of Rule A.D. 23, Section 14. That Rule, among other things, prohibits the filing of dilatory motions or motions to dismiss after a Verified Complaint has been filed with the Supreme Court of Indiana. This argument by the Petitioner is not accompanied by relevant authority and is without merit. One need only review the Petitioner's pleadings in this cause, including his Petition for Review and the lengthy decision of the Hearing Officer on the constitutional issues raised by the Petitioner, to agree that the Petitioner has been afforded an adequate opportunity to litigate his constitutional claims as part and parcel of the final hearing and the review proceeding before the Indiana Supreme Court. The First Amendment requires no more than this. *Sekerez v. Supreme Court of Indiana*, 685 F.2d 202 (7th Cir., 1982).

Therefore, it is respectfully submitted that Petitioner has failed to present a question that requires this Court's review

based upon the facts of this case.

The final question that must be addressed is whether Petitioner was deprived of a fair and adequate opportunity to present his claimed constitutional issues at the final hearing before the Hearing Officer. He essentially claims a violation of his right to procedural due process. His argument is that the Indiana Supreme Court or the Hearing Officer should have bifurcated the final hearing to permit a separate hearing on constitutional issues. The above proposition is not supported by cogent argument or the presentation to this Court of any record showing how the Respondent's rights were affected adversely by any ruling of this Court or the Hearing Officer. As to bifurcation, he simply argues that because he requested bifurcation and did not receive it he was denied due process. He neglects to say how or why and he therefore has waived this argument.

Therefore, it is respectfully submitted that Petitioner has failed to present a question that requires this Court's review based upon the facts of this case.

CONCLUSION

The decision of the Supreme Court of Indiana is correct. For the foregoing reasons it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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